

December 12, 2016

Mr. Devin Leary
Human & Rohde, Inc.
512 Virginia Avenue
Towson, Maryland 21286

Re: Miller Property (Lou)
Forest Conservation Special Variance
Tracking #03-16-2335

Dear Mr. Leary:

An amended request for a variance from Baltimore County's Forest Conservation Law was received by the Department of Environmental Protection and Sustainability (EPS) on December 1, 2016. The first variance request for the Miller Property was approved on June 13, 2016. That request proposed the removal of 12 of 17 specimen trees, and the proposed septic reserve area (SRA) on Lot 2 was relocated to retain more trees. Subsequently, perc tests on Lot 2 failed in the relocated SRA, and the SRA is now proposed to be moved back to its originally designed, successful location. The amended variance request now includes proposed impacts to 15 of 17 specimen trees.

The site is comprised of 6 acres and is located on the west side of Blenheim Road, in the Jacksonville section of Baltimore County. The project proposes a three-lot minor subdivision consisting of 1.5 to 2.1 acre lots. The entire site, with the exception of the area occupied by an existing dwelling and driveway, is forested Tulip Poplar association, consisting of 2 Stands. The forest is considered priority for retention due to its contiguity with large tracts of offsite forest and its high structural diversity; including the presence of 17 specimen trees in Forest Stand #1, which is the area of the proposed subdivision. An intermittent stream, which is a tributary to Overshot Run, and non-tidal wetlands, are located adjacent to the southwestern portion of the site, projecting a forest buffer onto the property.

This variance request proposes to remove 15 of the 17 specimen trees for the purpose of constructing a 3-lot minor subdivision. The 15 trees are identified on the variance plan as Trees #1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 17 and 18. All of the 17 specimen trees occur in proximity to Blenheim Road, in the only areas of the property suitable for development. The remainder of the property contains steep slopes and a forest buffer. This area comprises approximately one-half of the property and is proposed on the plans as a Forest Buffer Easement and Forest Conservation Easement. The size range of the 15 trees to be removed is 30 to 38 inches in diameter at breast height (DBH). These trees are predominately Tulip Poplar, but also include Black Oak and White Oak. The 2 specimen trees to be retained are 30 to 34 inches DBH Tulip Poplar, and are identified on the plan as Trees #14 and 15. They are located within the forest, which will be retained within a proposed Forest Conservation Easement.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The plans with the application show that all 17 of the specimen trees cannot be permanently protected when considering the specimen tree locations and the extent of priority forest. The engineer made several attempts to alter the subdivision layout to retain more specimen trees, and at the same time, protect the onsite priority forest. Revisions were made to Lots 2 and 3 which included relocation of the septic reserve area (SRA) on Lot 2 and redesign of the proposed driveway and dwelling on Lot 3. However, the perc tests failed on Lot 2 in the relocated SRA, making it necessary to utilize the previously proposed SRA that had passing perc tests. This change resulted in impacts to three specimen trees that would have otherwise been retained. Section 33-6-111(b) of the Code states, in part, that areas considered priority for retention shall be left in an undisturbed condition unless the applicant has demonstrated to the satisfaction of the Department that reasonable efforts have been made to protect them, that the plan cannot be reasonably altered, and the plan complies with all other applicable laws. Fifteen of the 17 specimen trees cannot be retained without severely impacting the feasibility of the project. Many of them are associated with property access/egress requirements, sight distance requirements, and/or SRA requirements. Denying this variance request would deprive the applicant of all beneficial use of the property. The applicant has demonstrated to the satisfaction of the Department why these priority areas cannot be left in an undisturbed condition, that reasonable efforts have been made to protect them and that the plan cannot be reasonably altered. Therefore, this criterion is met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The variance request arises from a unique situation concerning the location of the specimen trees on the site, other forest areas onsite, the area of the property that can be developed and the infrastructure requirements. The development proposal is based on these unique conditions of the property, and not from general conditions of the neighborhood. Therefore, this criterion is met.

The third criterion (Subsection 33-6-116 (d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. This 6-acre property is proposed to be subdivided into 3 lots. It is bounded to the north, west and south by single-family dwellings on lots of various sizes with the same zoning, most of which are largely forested, and on the east by Blenheim Road and single-family dwellings of various sizes with the same zoning. Of the 6 acres, 2.5 acres will be protected by Forest Conservation Easements and a Forest Buffer Easement that protect Overshot Run and its tributaries to nearby

Loch Raven Reservoir, and that are contiguous to large offsite forest tracts. Therefore, the proposed subdivision development of the site would be compatible with the neighborhood, and this criterion is met.

The fourth criterion (Subsection 33-6-116 (e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. Adequate Forest Conservation Easements and a Forest Buffer Easement have been proposed to provide water quality protection for the streams and wetlands located offsite. Stormwater management is being provided for the development in accordance with current County regulations. Therefore, this criterion is met.

The fifth criterion (Subsection 33-6-116 (e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance, which is the result of actions taken by the petitioner. The petitioner has not taken any action on the property that would necessitate this variance request. Therefore, this criterion is met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Fifteen of the specimen trees to be impacted cannot be retained without severely impacting the feasibility of the project. As stated above, many of the trees are associated with access/egress, sight distance, SRA, or other development requirements. Denying this variance would deprive the applicant of a reasonable use of the property. The applicant has demonstrated to the satisfaction of this Department why these priority areas for retention cannot be left in an undisturbed condition, that reasonable efforts have been made to protect them and that the plan cannot be reasonably altered. The 15 specimen trees to be impacted are located within existing forest, and the applicant is required by the law to mitigate for forest impacts by meeting all forest conservation requirements. In this case, requirements will be met by priority forest retention onsite. Therefore, this criterion is met.

Based upon our review, this Department finds that the required variance criteria have been met for the removal of the 15 specimen trees identified on the plan and herein. Therefore, the variance is hereby approved for the removal of those 15 specific specimen trees, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. This Forest Conservation variance approval supersedes the previous variance approval granted by this Department on June 13, 2016.
2. Application of overall Forest Conservation requirements to the project will suffice as mitigation for the impacts to the 15 specimen trees to be removed, given that these trees are located within the forest. A final Forest Conservation Plan (FCP) for this project must be approved by EPS prior to approval of the minor subdivision plan. The FCP must include, but not be limited to, tree protection devices for specimen trees and forest that will be located within 50 feet of the limit of disturbance.

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3. The Forest Conservation Easements and Forest Buffer Easement and must be recorded in the Land Records of Baltimore County prior to approval of the minor subdivision plan.
4. A note must be added to all future plans for this project that states: "A Forest Conservation variance was granted by the Baltimore County Department of Environmental Protection and Sustainability to allow for impacts to 15 specimen trees on this project site, and mitigation was provided by meeting all forest conservation requirements as outlined on the approved forest conservation plan".

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended, or new variance request.

Please have the property owner(s) sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Thomas Panzarella at (410) 887-3980.

Sincerely yours,

Vincent J. Gardina
Director

VJG/tcp

c: Marian Honeczy, MDDNR

I/we agree to the above conditions to bring my/our property, described herein, into compliance with the Baltimore County Forest Conservation Law.

Property Owner(s)

Date

Printed Name(s) of Owner(s)